

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SUSAN S. CHURCH, Derivatively on
Behalf of COCRYSTAL PHARMA, INC.,

Plaintiff,

v.

ELLIOT MAZA, JEFFREY MECKLER,
GERALD MCGUIRE, JAMES MARTIN,
CURTIS DALE, RAYMOND SCHINAZI,
GARY WILCOX, DAVID S. BLOCK,
PHILLIP FROST, JANE HSIAO, STEVEN
RUBIN, and BRIAN KELLER,

Defendants,

and

COCRYSTAL PHARMA, INC.,

Nominal Defendant.

No. 2:19-cv-00080 TSZ

STIPULATION AND ORDER
REGARDING ACCEPTANCE OF
SERVICE OF PROCESS AND STAY OF
PROCEEDINGS

WHEREAS, on January 16, 2019, Plaintiff Susan S. Church (“Plaintiff”) filed in this Court a Verified Stockholder Derivative Complaint (the “Complaint”) (ECF No. 1) on behalf of nominal defendant Cocrysal Pharma, Inc. (“Cocrysal”), captioned *Church v. Maza, et al.*, Case No. 19-cv-00080-TSZ (the “Action”);

STIPULATION AND ORDER
(Case No. 2:19-cv-00080 TSZ) – 1

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1 WHEREAS, the Complaint names as defendants Elliot Maza, Jeffrey Meckler, Gerald
2 McGuire, James Martin, Curtis Dale, Raymond Schinazi, Gary Wilcox, David S. Block, Phillip
3 Frost, Jane Hsiao, Steven Rubin, and Brian Keller (collectively with Cocystal, “Defendants”),
4 who are either current or former directors and officers of Cocystal, or former officers of its
5 predecessor, BioZone Pharmaceuticals, Inc. (“BioZone”), and generally alleges that those
6 defendants breached their fiduciary duties by failing to disclose in public filings the existence of a
7 scheme in 2013 to artificially inflate the price of BioZone stock;
8

9 WHEREAS, a related securities class action lawsuit, captioned *Pepe v. Cocystal Pharma,*
10 *Inc., et al.*, Case No. 2:18-cv-14091-KM-JBC, is pending in the United States District Court for
11 the District of New Jersey (the “Securities Class Action”);

12 WHEREAS, the complaint in the Securities Class Action asserts federal securities claims
13 against certain defendants who are also named as defendants in the Action arising from facts
14 common to those alleged in the Action and, in particular, names as defendants current or former
15 officers of Cocystal and former officers of BioZone, among others, and alleges that those
16 defendants violated the federal securities laws by failing to disclose in public filings the existence
17 of a scheme in 2013 to artificially inflate the price of BioZone stock;
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19 WHEREAS, on December 18, 2018, the court in the Securities Class Action entered an
20 order providing that (a) within fourteen (14) days of the court’s order appointing a Lead Plaintiff
21 in the Securities Class Action, counsel for the parties shall confer regarding a schedule for Lead
22 Plaintiff to file an amended complaint and for defendants to move to dismiss that amended
23 complaint, and (b) within twenty-one (21) days of the court’s order appointing a Lead Plaintiff,
24 the parties shall file a Stipulation and Proposed Order seeking the court’s approval of that schedule;
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1 WHEREAS, motions to appoint Lead Plaintiff and Lead Plaintiff's counsel are fully
2 briefed and pending before the court in the Securities Class Action;

3 WHEREAS, counsel for Plaintiff and counsel for defendants Gary Wilcox, Raymond
4 Schinazi, Jane Hsiao, Steven Rubin, David S. Block, James Martin, Gerald McGuire, Jeffrey
5 Meckler, Curtis Dale, and Nominal Defendant Cocystal Pharma, Inc. (collectively with Plaintiff,
6 the "Stipulating Parties"), who are all the parties who have appeared in the Action, have conferred
7 regarding the status of the Action, the Securities Class Action, and the appropriate next steps;
8

9 WHEREAS, the Stipulating Parties agree that resolution of the related Securities Class
10 Action may have bearing on the claims asserted in the Action;

11 WHEREAS, based on the overlapping parties and factual allegations in the Action and in
12 the Securities Class Action and the likely impact of the resolution of the Securities Class Action
13 on the claims in the Action, and to avoid the unnecessary expenditure of judicial and party
14 resources, the Stipulating Parties have agreed, subject to this Court's approval, to a limited stay of
15 the Action until (1) the Securities Class Action is dismissed, with prejudice, and all appeals related
16 thereto have been exhausted; (2) any defendant's motion to dismiss the Securities Class Action is
17 denied in whole or in part; or (3) the stay is modified by stipulation of the parties to the Action as
18 ordered by the Court, or by the Court pursuant to a motion;

19
20 WHEREAS, other federal courts have recognized that it is logical and appropriate to stay
21 shareholder derivative litigation based on the same misconduct alleged in related federal securities
22 litigation until the related federal securities litigation has been resolved, *see, e.g.*, Joint Stipulation
23 and Order Staying Action, *In re Impinj Derivative Litig.*, Lead Case No. 18-cv-01686-RGA (D.
24 Del., Jan. 28, 2019) (Dkt. No. 11) (staying shareholder derivative action until resolution of related
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26

1 securities litigation pending in Western District of Washington (*In re Impinj Sec. Litig.*, No. 3:18-
2 cv-05704 (W.D. Wash.) (Lasnik, J.)) based on common parties and factual allegations in derivative
3 litigation and securities litigation); Stipulation and Order Regarding Consolidation and Stay of
4 Proceedings, *In re Tesla, Inc. S'holder Derivative Litig.*, Case No. 18-cv-01669-CFC (D. Del.,
5 Feb. 25, 2019) (Dkt. No. 15) (staying shareholder derivative litigation until resolution of related
6 securities litigation asserting claims arising from facts alleged in derivative litigation and where
7 parties agreed that resolution of securities litigation may have bearing on claims asserted in
8 derivative litigation);
9

10 WHEREAS, the Stipulating Parties therefore respectfully submit that such a stay of the
11 Action is appropriate;

12 WHEREAS, counsel for the Stipulating Parties have conferred with out-of-state counsel
13 for defendants Phillip Frost and Elliot Maza, who have not yet appeared in the Action, and counsel
14 for Mr. Frost and Mr. Maza have agreed to accept service of the Complaint on behalf of Mr. Frost
15 and Mr. Maza, respectively, reserving all rights and defenses other than insufficient service of
16 process, and each consent to the relief requested in this Stipulation and Proposed Order;
17

18 WHEREAS, defendant Brian Keller was served with the Complaint on March 2, 2019 and
19 an affidavit of service was filed with the Court on March 11, 2019 (ECF No. 8), and Mr. Keller
20 has not yet appeared in the Action, and the Stipulating Parties do not know his opinion on the relief
21 requested in this Stipulation and Proposed Order;

22 WHEREFORE, the Stipulating Parties, through their undersigned counsel, hereby agree,
23 stipulate, and respectfully request that the Court enter an Order as follows:
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27 STIPULATION AND ORDER
(Case No. 2:19-cv-00080 TSZ) – 4

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1 1. Undersigned counsel for defendants agree to accept service of the Complaint in the
2 Action on behalf of each of the defendants they represent, but each defendant expressly reserves
3 all rights and defenses other than insufficient service of process.

4 2. Except as noted below, all proceedings, including any motion practice, obligation
5 to respond to the Complaint and any amended complaint, and all discovery and disclosure
6 obligations or deadlines under the applicable local and federal rules or previously-issued Orders
7 of this Court in the Action are hereby stayed until (1) the Securities Class Action is dismissed,
8 with prejudice, and all appeals related thereto have been exhausted; (2) any defendant's motion to
9 dismiss the Securities Class Action is denied in whole or in part; or (3) the stay is modified by
10 stipulation of the parties to the Action as ordered by the Court, or by the Court pursuant to a motion.
11

12 3. Defendants shall promptly notify Plaintiff's undersigned counsel of any related
13 shareholder derivative actions filed nominally on behalf of Cocystal of which they become aware.

14 4. Defendants shall promptly notify Plaintiff's undersigned counsel if any such related
15 derivative action is not stayed. In the event that any such related derivative action is not stayed,
16 Plaintiff may lift the stay of this Action upon thirty (30) days' notice, by email, to Defendants'
17 undersigned counsel.
18

19 5. If the Action is not earlier dismissed, Defendants shall include Plaintiff in any
20 mediations with Lead Plaintiff in the Securities Class Action, and Defendants shall include
21 Plaintiff in any mediations or formal settlement meetings or conferences with any plaintiff in any
22 related derivative action. Plaintiff's ability to attend and participate in any mediations or formal
23 settlement meetings or conferences is contingent on Plaintiff's agreement to be bound by any
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1 confidentiality agreement or stipulation governing such meditation or formal settlement meeting
2 or conference.

3 6. In the event that nominal defendant Cocystal produces any document to any
4 purported Cocystal shareholder in response to a books and records demand under 8 *Del. C.* § 220
5 based on allegations related to those in the Action, by way of a court order or otherwise, Cocystal
6 will provide copies of those documents to Plaintiff's undersigned counsel subject to the execution
7 of an appropriate confidentiality agreement and/or protective order by Plaintiff and Plaintiff's
8 counsel; provided that Cocystal need not produce to Plaintiff's undersigned counsel any
9 documents produced to any purported Cocystal shareholder in response to a books and records
10 demand under 8 *Del. C.* § 220 unless and until that shareholder files a related derivative action.
11

12 7. During the stay, Plaintiff may file an amended complaint, but Defendants need not
13 answer, move to dismiss, or otherwise respond to any amended complaint during the pendency of
14 the stay.
15

16 8. Within twenty (20) days of the termination of the stay, the parties to the Action
17 shall meet and confer and submit to the Court a proposed scheduling order governing further
18 proceedings in the Action.

19 9. Upon termination of the stay, Defendants shall not move to stay the Action in
20 deference to another related derivative action.

21 10. All pending deadlines, hearings, or conferences are vacated until after the stay is
22 terminated.
23

24 11. This Order shall remain in effect until further order of this Court.
25
26

1 DATED: March 15, 2019.

2
3 s/ Roger Townsend

Roger Townsend, WSBA #25525

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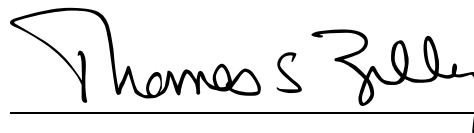
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Rubin, David S. Block, James Martin,
Gerald McGuire, Jeffrey Meckler, Curtis
Dale, and Nominal Defendant Cocrysal
Pharma, Inc.

19 **ORDER**

20 IT IS SO ORDERED, without prejudice to the right of non-appearing Defendants to
21 appear and oppose the relief granted herein.

22 Dated this 9th day of April, 2019.

23
24 

25 Thomas S. Zilly

26 United States District Judge

27 **STIPULATION AND ORDER**

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